

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

BILLY RAYFORD

§

VS.

§

CIVIL ACTION NO. 9:21cv46

DAVID GUITERREZ, ET AL.

§

ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Billy Rayford, an inmate confined within the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed the above-styled civil rights lawsuit pursuant to 42 U.S.C. § 1983. The court previously referred this matter to the Honorable Christine L. Stetson, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to 28 U.S.C. § 636 and applicable orders of this Court.

Plaintiff filed a motion for summary judgment. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the motion be denied.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. Plaintiff filed objections to the Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. After careful consideration, the court is of the opinion the objections are without merit. At the time plaintiff filed his motion, none of the defendants had been served with process. The magistrate concluded that a judgment could not be entered against the defendants before they were served. After he filed his motion, plaintiff attempted to serve the defendants. However, at the time plaintiff filed the motions the defendants had not been served with process. As a result, the magistrate judge correctly plaintiff's motion was premature and could not be granted.

ORDER

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED** as the opinion of the court. Plaintiff's motion for summary judgment (doc. no. 10) is **DENIED**.

SIGNED this the **25** day of **January, 2022**.

A handwritten signature in black ink, appearing to read "Thad Heartfield", written over a horizontal line.

Thad Heartfield
United States District Judge